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ABORIGINAL PEOPLE AND TAXATION

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September 1992

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CANADA

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ABORIGINAL PEOPLE AND TAXATION

Aboriginal people in Canada, like all Canadians, are subject to laws that impose taxes. This paper will provide a brief overview of the legislative framework of taxation in Canada, examine particular exemptions currently available to aboriginal people, and identify possible further sources of exemptions.

TAXATION IN CANADA

A. Legislative Framework

The power of governments to levy tax stems from the *Constitution Act, 1867* and the *Constitution Act, 1982*; the Parliament of Canada is authorized to raise money by any mode or system of taxation, while the provinces have the authority to levy "direct taxation within the province." Consequently, a number of statutes, both federal and provincial have been spawned. The federal government imposes tax on individual and corporate income (the *Income Tax Act*); taxes the purchase of goods and services (the *Excise Tax Act*); and levies duties on the importation of goods into Canada (*Customs Tariffs*). Provincial taxation statutes levy taxes on everything from income, to retail sales, to tobacco, to liquor. Municipal taxation powers derive from provincial legislation; the principal municipal tax is on real property.

Existing forms of governments representing Indian people have various taxation powers under federal legislation. Band councils established pursuant to the *Indian Act*, for example, are empowered by section 83 of the *Indian Act* to pass by-laws[1] for the purpose of taxation of land or interests in land for local purposes in the reserve. Although bands have had

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(1) By-laws are federal statutory instruments which are, however, exempt from examination by the Standing Committee for the Scrutiny of Regulations under the *Statutory Instruments Act*.

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the power to impose taxation on real property interests for many years, they have exercised it only in the last 20 or so. Amendments in 1988, the "Kamloops" amendments, clarified the legal status of "conditionally surrendered land," now called "designated lands"; the definition of "reserve" now includes designated land. Therefore, while designated land may be leased to non-Indians, it is now clear that by-laws imposing real property taxation extend to such land. For some bands, this clarification has facilitated commercial development of reserve lands.

Federal self-government legislation authorizes two particular Indian bands to make taxation by-laws for local purposes: section 14(1)(e) of the *Sechelt Self-Government Act* provides that the Sechelt Band in British Columbia may make such by-laws, and section 45(1)(h) of the *Cree-Naskapi (of Quebec) Act* provides that the Cree and Naskapi Bands may do so.

B. Exemptions from Taxation

Taxation statutes specify under what conditions they impose taxes and under what conditions an exemption is available. The factors determining whether a statute applies are different in each case: for example, the place of residence is one relevant factor for determining whether the federal *Income Tax Act* applies to a particular individual. The exemption from taxation found in section 87 of the *Indian Act* depends on the legal status of the individual as an Indian.

One example of an exemption from taxation is that provided in the federal *Income Tax Act* for "charitable organizations" and "charitable foundations." There are thousands of charitable organizations in Canada; most are established as either trusts or corporations. The Act does not define "charitable" organization, and therefore it is necessary to refer to the common law governing charity to determine whether a particular organization qualifies. In the 1986 case *Native Communications Society of B.C.* v. *MNR*, [1986] 3 F.C. 471, before the Federal Court of Appeal, the appellant, the Native Communications Society of B.C. successfully appealed the Minister's refusal to register it as a charitable organization. Registration was refused on the grounds that the objects of the corporation went beyond exclusively charitable ones. The stated purpose of the corporation included the development of radio and television productions relevant to the native people of British Columbia and the delivery of information on

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issues affecting native people. The court noted that the starting point for a determination of what may or may not constitute a good charitable purpose is the 1891 House of Lords decision in *Commissioners of Income Tax* v. *Pemsel*, which laid down four principal divisions for "charity." The court decided that the appellant's purposes fell within the fourth head of power: "trusts for other purposes beneficial to the community, not falling under any of the preceding heads." In making its decision, the court took into account the special legal position of the Indian people in Canadian society and the fact that the state has assumed special responsibility for their welfare.

Similarly, the Federal Court Trial Division in *Gull Bay Development Corporation* v. *The Queen*, [1984] 1 C.N.L.R. 74 held that the plaintiff, incorporated as a non-profit organization, was entitled to an exemption from tax pursuant to section 149(1)(l) of the *Income Tax Act*. The corporation carried on a commercial logging operation, and the profits generated were used for its non-profit activities.

POTENTIAL SOURCES OF EXEMPTIONS FOR ABORIGINAL PEOPLE

In addition to federal and provincial statutes and executive orders, possible sources of exemption from taxation for aboriginal people include treaty and aboriginal rights as recognized by the *Constitution Act, 1982*.

A. Treaties

While it has not been tested in court, it is arguable that there are treaty provisions which exempt certain Indian people from taxation. For example, Treaty No. 8, 1899 was accompanied by records of an "oral representation" exempting treaty Indians from paying taxes.[2]

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(2) Robert A. Reiter, *Tax Manual for Canadian Indians*, First Nations Resource Council, Edmonton, 1989, p. 2.8.

B. Treaty and Aboriginal Rights as Recognized and Affirmed in the *Constitution Act, 1982*

Section 35 of the *Constitution Act, 1982* recognizes and affirms existing aboriginal and treaty rights, but the Act does not indicate the scope of these rights. Some argue that this scope is not an "empty box" but includes a number of rights, such as the right of self-government, land rights, and hunting and fishing rights.

Author Robert Reiter asserts that a general Indian tax exemption may be found in the category of aboriginal rights connected with self-government and the recognition of customary aboriginal law. He argues that Indian economy and governments were traditionally based on a communal model where people helped one another in acquiring the materials necessary for maintaining subsistence. Tax was a foreign mechanism to this traditional system, as was the requirement for Indians to live in restricted areas (reserves). Consequently, just as Indians have special rights with respect to land and land based uses, Indians also have a special right with respect to government and economy; one aspect of this right would be an exemption from taxation.[3] If any right exists, it is an aboriginal right of Indian bands to tax their members. The author argues that the right to a general exemption from taxation was never extinguished and cites section 87 of the *Indian Act* in evidence. Thus, he claims that section 35 recognizes the general aboriginal right of Indians to be exempt from paying taxes.

C. Customs Tariff

In 1956, the Supreme Court of Canada held in *Francis* v. *The Queen*, [1956] S.C.R. 618, that Indians are not exempt from the payment of customs duties on imported articles. Until then, reliance had been placed on the 1794 *Jay Treaty* between Britain and the United States to exempt the accused from the payment of duty. The Court held, however, that since the treaty had not been implemented in Canada by legislation, it could not be relied upon. The court also held that section 87 of the *Indian Act* did not exempt Indians from the payment of custom duty, because the duty was not a tax upon the personal property of an Indian situated on reserve.

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(3) *Ibid.*, p. 2.14.

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In recognition of the special geographical considerations of St. Regis/Akwesasne, a reserve which straddles the U.S. border, the Akwesasne Residents Remission Order provides remission of duties paid or payable on certain goods acquired in the U.S. and imported into Canada by Akwesasne residents. This pertains to items such as foodstuffs and clothing but not tobacco and alcohol.

Author Robert A. Reiter points out that constitutional arguments could be used to claim an exemption from custom duties. He notes that some have claimed that the administrative practice of Revenue Canada for Akwesasne is evidence of the recognition of an aboriginal right to an exemption. This is augmented by the ruling in *R.* v. *Sparrow*, which held that an aboriginal right limited by regulation still survives.[4]

EXEMPTIONS FROM FEDERAL TAXATION

A. The *Indian Act*

1. Nature and Purpose of the Exemption

The statutory exemption provided in the *Indian Act* provides certain exemptions from taxation for Indians. Section 87 provides:

> (1) Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to section 83, the following property is exempt from taxation, namely,
>
> (a) the interest of an Indian or a band in reserve or surrendered lands; and
>
> (b) the personal property of an Indian or band situated on a reserve.
>
> (2) No Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property.

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(4) *Ibid.*, p. 8.3.

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> (3) No succession duty, inheritance tax or estate duty is payable on the death of any Indian in respect of any such property mentioned in paragraphs (1)(a) or (b) or the succession thereto if the property passes to an Indian, nor shall any such property be taken into account in determining the duty payable under the Dominion Succession Duty Act, ...[5]

The courts have considered the meaning of section 87 in a number of cases and with respect to issues such as: whether an intangible item such as employment income or unemployment insurance benefits is "personal property," and how to determine when tangible property, such as a car or a lease, is "situated on reserve."

The exemption dates back at least as far as the statutes of the Province of Canada, which provided that no taxes should be levied upon any Indian residing on Indian lands or upon any Indian in respect of Indian lands in Upper Canada.[6] Author Jack Woodward notes that the rational for the exemption may have been based on a view of the Indians as having an independent status, similar to that of Indian nations in the United States, where they were considered self-governing but dependent, and were not subject to taxes on their lands or property.[7]

The Supreme Court of Canada in *Mitchell* v. *Peguis Indian Band* (1990), 71 D.L.R. (4th) 193 considered whether funds held by the Crown to be rebated to the Peguis Band because of the imposition of an invalid provincial sales tax, could be garnisheed by a third party. The issue was whether by virtue of section 90(10)(b), the moneys were deemed to be situated on a reserve and therefore, protected from garnishment by section 89.

In deciding in favour of the respondent Indian Band, Justice La Forest elaborated an approach for the consideration of the issue, based on the historical record of sections 87, 89 and 90 of the *Indian Act* (the deeming provisions in section 90 also apply to section 87). He noted (at p. 223) that:

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(5) At the present time, neither the federal government nor any province levies succession taxes.

(6) S.C. 1850, c. 74, s. 4.

(7) Jack Woodward, *Native Law*, Carswell, Toronto, 1989, p. 302.

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> sections 87 and 89, the sections to which the deeming provision of s. 90 of the *Indian Act* applies, confer protection of certain categories of property held by Indians. ... Section 87 confers a tax exemption on Indians with respect to their interest in reserve or surrendered lands, and their personal property situated on reserves. It is instructive to note that such exemptions predate Confederation...As is clear from comments of the Chief Justice in *Guerin* v. *The Queen*...these legislative restraints on the alienability of Indian lands are but the continuation of a policy that has shaped the dealings between the Indians and the European settlers since the time of the Royal Proclamation of 1763...I take it to be obvious that protections afforded against taxation and attachment by ss. 87 and 89 of the *Indian Act* go hand in hand with these restraints on the alienability of the land. I noted above that the Crown, as part of the consideration for the cession of Indian lands, often committed itself to giving foods and services to the natives involved. Taking but one example, by terms of the "numbered treaties" concluded between the Indians of the prairie region and part of the Northwest Territories, the Crown under took to provide Indians with assistance in such matters as education, medicine, and agriculture, and to furnish supplies which Indians could use in the pursuit of their traditional vocations of hunting, fishing and trapping. The exemptions from taxation and distraint have historically protected the ability of Indians to benefit from this property in two ways. First, they guard against the possibility that one branch of government, through the imposition of taxes, could erode the full measure of the benefits given by that branch of government entrusted with the supervision of Indian affairs. Secondly, the protection against attachment ensures that the enforcement of civil judgements by non-natives will not be allowed to hinder Indians in the untrammelled enjoyment of such advantage as they had retained or might acquire pursuant of the fulfilment of the Crown of its treaty obligations.

Justice La Forest went on to comment that the purpose of the legislation is not to remedy the economically disadvantaged position of Indians by ensuring that Indians may deal with property in the commercial mainstream on different terms from other Canadians; an examination of decisions bearing on these sections confirms that Indians who acquire and deal in property outside lands reserved for their use, deal with it on the same basis as all other Canadians. He cautioned against ascribing an overly broad purpose to sections 87 and 89.

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2. Application of Section 87

The definition of "Indian" in section 2 of the *Indian Act* includes those persons who are registered or who are entitled to be registered as Indians. The definition does not include Inuit or Metis peoples.

Section 4.1 of the *Indian Act* indicates that a reference to an "Indian" in section 87(a) includes those who are entitled to have their names on a band list and whose name has been entered thereon. Since the *Indian Act* allows bands to control their own membership, it is possible that the band's membership rules may permit non-"Indians" to become members. Consequently, while all of the exemptions in 87 apply to status Indians, the exemption in 87(1)(a) may also extend to non-status members.[8]

The case of *The Queen* v. *Kinookimaw Beach Association* (1979), 102 D.L.R. (3d) 333 held that the definition of "Indian" does not extend to corporations, even where the shareholders are Indians.

3. Interpretation of Section 87 by the Courts

A number of cases have considered section 87. The 1983 decision of the Supreme Court of Canada in *Nowegijick* v. *The Queen* (1983), 144 D.L.R. (3d) 193, is the leading case.

The Court indicated that section 87 exempts certain property from taxation and certain persons from taxation in respect of such property. This is in contrast to the view that the section is concerned with exemption from direct taxation of land or personal property.

The Court also provided general principles for the interpretation of statutes. It noted (at p. 198) that "treaties and statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indian. If the statute contains language which can reasonably be construed to confer tax exemption, that construction, in my view, is to be favoured over a more technical construction which might be available to deny exemption."

Nowegijick concerned an Indian who was an employee of the Gull Bay Development Corporation, whose head office was on the Gull Bay Reserve but which carried on logging at a location off the reserve. Income tax was assessed on the income earned by Mr.

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(8) *Ibid.*, p. 302.

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Nowegijick. First, the Court held that the wages were "personal property." Secondly, the Court found that, as section 87 created an exemption for both persons and property, it did not matter whether the taxation of wages was characterized as tax on persons or tax on property. The parties had agreed that the wages were situated on reserve, and, therefore, the Court found that the exemption was available. Although it was not applied, the test to be used to determine whether the income is situated on reserve was discussed. The Court noted that the situs of income is determined by the residence of the debtor: "the situs of the salary ... received was the reserve because it was there that the residence or place of the debtor ... was to be found, and it was there that the wages were payable" (p. 196).

Horn v. *MNR*, a 1989 decision of the Tax Court of Canada, also considered whether certain intangibles were "personal property." An employee of the Department of Indian Affairs whose place of work and usual residence were in the City of Ottawa, claimed that her taxable income should not include that portion of her employment income relating to holidays and sick leave time spent on a reserve. The taxpayer claimed an exemption from taxation on three grounds: that her skills, training and background should be deemed always to be situated on a reserve by virtue of being personal property purchased by the Crown with Indian moneys appropriated by Parliament for the use and benefit of Indian bands; that her skills and training were personal property situated on a reserve and thus exempt pursuant to section 87; and that the situs of the wages was on reserve. The tax court rejected the argument that skills and training were personal property that could be purchased by the Crown. With respect to the second argument, it was noted that skills and training are not personal property; however, even assuming that they were so, it is not this property which is subject to tax, and in any event, it is not situated on reserve when it gives rise to the wages. With respect to the third argument, the Court noted that, following *Nowegijick*, it did not matter whether the taxation of income was characterized as a tax on persons or on property; at issue was whether the property was situated on reserve. The court applied the residence of the debtor test and found that the debtor, the Crown, was not situated on reserve.

The 1992 decision of the Supreme Court of Canada in *Williams* v. *Canada* (1992), 90 DLR (4th) 129 ruled that unemployment insurance benefits were personal property "situated on reserve" and were therefore exempt from taxation by virtue of section 87.

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In making its decision, the court formulated a new test for determining the situs or location of this type of property. The court cautioned, however, that it was not an appropriate case in which to develop a test for the situs of the receipt of employment income.

Justice Gonthier noted the approach taken by La Forest in *Mitchell* v. *Peguis Band* regarding the nature and purpose of the exemption from taxation, and commented at 135 that:

> Under the *Indian Act*, an Indian has a choice with regard to his personal property. The Indian may situate this property on the reserve, in which case it is within the protected area and free from seizure or taxation, or the Indian may situate this property off the reserve, in which case it is outside the protected area. ... The purpose of the situs test in s. 87 is to determine whether the Indian holds the property in question as part of the entitlement of an Indian qua Indian on the reserve. Where it is necessary to decide among various methods of fixing the location of the relevant property, such a method must be selected having regard to this purpose.

The test requires the evaluation of the relevant connecting factors which tie the property to one place or another, in order to determine its situs. It is a middle ground between a rigid test, which considers only one or two factors, and a flexible test, which would balance all the relevant connecting factors on a case-by-case basis. The approach adopted analyzes the matter in terms of categories of property and types of taxation. The first step is to identify the various connecting factors which are potentially relevant. These factors are then analyzed to determine what weight they should be given in identifying the location of the property in light of three considerations: (1) the purpose of the exemption under the *Indian Act*; (2) the type of property in question; and (3) the nature of the taxation of that property. It is asked what weight should be given each factor in deciding whether the specific tax would amount to the erosion of the entitlement of the Indian *qua* Indian on a reserve.

The court applied the test so as to determine the situs of the benefits. Among the factors considered were the residence of the debtor (the traditional test), the residence of the person receiving the benefits, and the place the benefits were paid. The court considered the two most important factors to be the location of the employment income that was the basis for the qualification of the benefits, and the residence of the recipient.

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The court found that there is a strong connection between the receipt of benefits and the location of the employment that gave rise to the benefits; benefits are based on premiums arising out of previous employment. Furthermore, the connection to previous employment is strengthened by the symmetry of treatment in the taxation of premiums and benefits. Premiums are tax-deductible and benefits are taxed, thus minimizing the influence of the whole scheme on general tax revenues. Therefore, it is an important factor in determining whether the taxation of the benefits erodes the entitlement of an Indian *qua* Indian on reserve. In the case of an Indian whose qualifying income was on the reserve, the symmetry breaks down: the original employment income was tax exempt so the taxation paid on the benefits does more than offset the tax saved by virtue of the premiums, it is an erosion of the entitlements created by the Indian's employment on reserve. Furthermore, since the duration and extent of the benefits are tied to the terms of employment, it is the location of the employment income that is relevant.

The court cautioned that the case is not an appropriate one in which to develop a test for the situs of the receipt of employment income. In the case at hand, there were no relevant factors pulling in opposite directions; the employer was located on reserve, the work was performed on reserve, the appellant resided on reserve, and was paid on reserve. Thus, the question of the relevance of the residence of the recipient did not arise.

With respect to the exemption for persons, author Jack Woodward has suggested that the fact that an Indian lives off-reserve, or works off-reserve, or in some other way is not connected with a reserve, may not matter in determining whether the tax exemption applies. He argues that the exemption is in respect of personal property situated on a reserve and in respect of an Indian's interest in reserve or surrendered lands, and, therefore, the residence of the Indian should not be relevant in either case.[9]

Relief from taxation for income earned on a reserve by an Indian where the employer is located off-reserve, is provided by the Indian Remission Order. The Order for 1991 grants remission of certain taxes, interest and penalties to an Indian whose employment income is attributable to duties of office or employment performed on a reserve. For 1991, certain

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(9) *Ibid.*, p. 303.

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receipts of superannuation or pension benefits and training allowances received while the Indian was resident on a reserve were also included.

B. *Income Tax Act*

Section 81(1)(a) of the *Income Tax Act* states that an exemption is provided for "an amount that is declared to be exempt from income tax by any other enactment of the Parliament of Canada." Section 87 of the *Indian Act* declares such an exemption. The *Income Tax Act* does not afford any exemptions to Inuit or Metis people.

As noted above, in *Nowegijick* it was held that the appellant, a registered Indian, who lived on reserve but who worked off reserve for an Indian corporation, was not required to pay income tax in respect of the employment income earned.

In *Williams* v. *Canada*, the court found that income from unemployment benefits was personal property situated on reserve, and because of section 87, was exempt from taxation under the *Income Tax Act*. The work giving rise to the benefits had been performed on reserve for a corporation located on reserve.

C. The *Excise Tax Act* (GST)

The tax on goods and services, under the *Excise Tax Act*, was implemented in 1991. Policy guidelines were announced in 1990 with respect to the treatment of purchases made by Indians. Bulletin B-039, issued in February 1991, contains detailed guidelines on the subject.

The policy guidelines contain definitions of Indian; Indian band; band-empowered school, hospital, or social service entity; reserve; property; and real property. The term "tribal council" is also explained. Guidelines are provided for when an "entity" will be considered to be owned or controlled by a band.

It is noted that the GST will not apply to:

- on-reserve purchases of goods by Indians or bands, or to off-reserve purchases of goods delivered to the reserve by vendors or their agents. It is noted that imports will be subject to the normal import rules; GST on imported goods is collected under the authority of the *Customs Act*;

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- services purchased on-reserve by Indians, where the benefit will be primarily realized on-reserve;

- services such as legal or accounting services when purchased by a band for band management, or in connection with real property located on-reserve;

- unincorporated Indian-owned businesses may purchase on the same tax-free basis as Indian individuals; however, incorporated Indian-owned businesses will be treated the same as other businesses, that is, they will pay GST on their purchases of taxable goods and services. Guidelines are provided to indicate businesses that must register for the GST. Exemption from registration is provided for businesses with sales of less than $30,000.

EXEMPTIONS FROM PROVINCIAL/MUNICIPAL TAXATION

Section 87 of the *Indian Act* provides Indians with an exemption from provincial taxes. While most provinces have recognized that section 87 provides some exemption from provincial taxation, the provinces are not uniform in their acknowledgment of the scope of this exemption, either in their legislation or their administrative policies.

A. Provincial Taxation

1. Real Property

Section 87 applies notwithstanding any Act of a provincial legislature. While it is arguable that since the reorganization of the section in 1985, the notwithstanding clause only applies to section 87(1), and not section 87(2) and (3), the courts have not yet considered this argument.[10]

It is clear that section 87 prevents the taxation of reserve land by the province,[11] although there have been attempts to tax the interest of non-Indian occupiers of reserve land. In the past, courts upheld the taxation of reserves and surrendered lands occupied

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(10) "Aboriginal Law," Continuing Legal Education Society of British Columbia, p. 2.2.02.

(11) *Kamsack* v. *Can. Nor. Town Properties Co.*, [1924] S.C.R. 80.

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by non-Indians.[12] Since the enactment of Bill C-115 in 1988 (the "Kamloops" amendments), the definition of reserve now includes designated lands. These lands may be leased to non-Indians. Bands may now pass taxation by-laws with respect to such land, and many bands have chosen to enact by-laws which tax the non-Indian occupiers. Section 88 of the *Indian Act* indicates that provincial law applies to Indians, subject to a band by-law; where a band council has passed such a by-law, it is arguable that the province is prevented from taxing the non-Indian occupiers. The amendment has also ensured that purchases of personal property made by Indians on designated land are tax exempt.

With respect to taxation of property owned by Indians and located off reserve, the *Indian Act* is silent, although prior to 1951 it contained a provision which specified the extent of taxation of the off-reserve real and personal property of an Indian.

2. Personal Property

A number of court cases have challenged various provincial governments' imposition of taxes such as retail sales tax, tobacco and fuel tax on aboriginal people.

These cases have provided some clarification, but as noted earlier, each province has a different policy in regard to the imposition of taxes on aboriginal people and it is beyond the scope of this paper to review all the statutes and administrative policies of each. However, a few general points may be noted.

In Manitoba, for example, Indians are not generally exempt from the province's tax on gasoline purchased on reserves, of which there are some 60 in the province. In 1992, the province negotiated an agreement with treaty Indians of the Peguis Reserve which provides that the tax will be rebated to residents. Other agreements are in the process of being negotiated.[13]

Since 1 June 1991, eligible Indians and bands in the province of Alberta have been able to buy fuel and tobacco free of PST on retail outlets located on a reserve. The individual

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(12) *City of Vancouver* v. *Chow Chee* (1942), 1 W.W.R. 72 (B.C.C.A.).

(13) *Winnipeg Free Press*, 15 February 1992.

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must present a tax-exemption identification card and is forbidden to resell the tobacco or fuel.[14]

In British Columbia, the Court of Appeal in two cases[15] found that, because of section 87 of the *Indian Act*, purchases were not subject to provincial sales tax. One case involved a car which, though purchased on an Indian reserve, was used off the reserve. In another case, the court decided that where a ferry boat was leased by an Indian band and used off the reserve, the situs of the lease was the reserve; thus, section 87 prevented taxation of the lease payments. The common law rules to determine the situs of intangible property were applied. Subsequent to the cases noted above, amendments were made in 1987 to British Columbia's *Social Services Tax Act*, which imposes a retail sales tax. The amendments sought to tax Indians and bands on the off-reserve use of personal property that would otherwise not be taxable because of section 87. In *Leighton* v. *The Queen* (1989), 57 D.L.R. (4th) 657, the British Columbia Court of Appeal held that the restrictions were invalid and that they offended section 87 of the *Indian Act*. With respect to the test for determining the paramount situs of property, the Court noted that the pattern of use and safekeeping of the property must all be examined.

In Nova Scotia, the application of the *Nova Scotia Diesel Oil and Tax Act* to Indians was recently considered by the Provincial Court. It was held that the accused, an Indian, was entitled to purchase diesel oil on reserve without paying the tax. Furthermore, she was entitled to use it off the reserve without being subject to penalty under the Act. Similarly, in a 1989 case in British Columbia, a declaration was granted which confirmed that sales of gasoline on reserve to Indians for their own use were tax exempt.[16]

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(14) Robert A. Reiter, *Vol. II, The Fundamental Principles of Indian Law*, Indian Law Bulletin 7/91, "Indian Exemption to Alberta Provincial Sales Tax," First Nations Resource Council, Edmonton, 1991.

(15) *Danes* v. *The Queen in Right of B.C.*; *Watts* v. *The Queen in Right of B.C.* (1985), 18 D.L.R. (4th) 253 and *Metlakatia Ferry Ltd.* v. *The Queen in Right of B.C.* (1987), 37 D.L.R. (4th) 322.

(16) *Chehalis Indian Band* v. *The Queen* [1989] 3 C.N.L.R. 44 (BCSC). The declaration was not the subject of an appeal that followed.

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Provincial tobacco tax collection schemes have been challenged in the courts. Generally speaking, such tax collection schemes seek to make the wholesaler collect tax from vendors. Declarations have been successfully obtained indicating that Indian vendors are not required to pay the tax to wholesalers.[17]

In *Bomberry* v. *MNR*, [1989] 3 C.N.L.R. 27, the issue was whether the tobacco quota authorized by the *Ontario Tobacco Tax Act* applied to the applicant status Indians on the Six Nations Reserve. The Act imposed a tax on tobacco to be paid by the consumer; however, the regulations imposed a quota system limiting the ability of Indian retailers to purchase tax-free tobacco products. The evidence showed that the quota system was intended to reduce the availability of tax-exempt cigarettes to non-Indians. The Court held that the quota was not authorized by the legislation and therefore was an illegal exercise of authority. Furthermore, the provision also exceeded the constitutional authority of the province by intruding into an area of federal jurisdiction.

B. Municipal Taxation

The case of *Campbell River* v. *Nanakim*, [1984] 2 C.N.L.R. 85 (B.C. Prov. Ct.) held that municipalities have no power to tax enterprises on reserves within municipal boundaries.

An example of an exemption provided by a municipality is that discussed in the case of *Keewatin Tribal Council* v. *Thompson (City)*, 1989 3 CNLR 12 in which a native corporation successfully argued that an exemption for "lands held in trust for any tribe or body of Indians" found in the Manitoba *Municipal Assessment Act*, extended to exempt the corporation from taxation on lands held by the corporation within the municipality, and not only lands reserved for Indians.

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(17) *Johnson* v. *Nova Scotia*, [1990] 2 C.N.L.R. 63.

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CONCLUSION

The tax treatment of aboriginal people in Canada is somewhat haphazard. While section 87 of the *Indian Act* provides exemptions for Indians, the scope of this exemption is not yet clear. The courts have considered the meaning of section 87 in a number of cases, and in many of these have construed the section to provide tax exemptions from particular federal and provincial laws. It is likely that both federal and provincial statutes imposing tax on aboriginal people will continue to be challenged on a number of grounds.

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